

In the Matter of Merchant's Document No. Z-247899-D1 And All Other
Seamen Documents
Issued to: RICARDO DEAS

Decision of the Commandant
United States Coast Guard

1051

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This appeal has been taken in accordance with Title 46 United States code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 6 January 1958, an Examiner of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's seamen documents upon finding him guilty of misconduct. The specification alleges that while serving as an ordinary seamen on board the American SS MORMACSUN under authority of the document above described, on or about 20 November 1957, Appellant assaulted and battered crew member Arthur J. Matzke with a piece of glass.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in evidence the testimony of the alleged victim and two other witnesses. Appellant testified that he acted in self-defense. The Examiner, on his own motion, called a member of the crew to appear as a witness.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months outright and six months on eighteen month's probation.

FINDING OF FACT

On 20 November 1957, Appellant was serving as an ordinary seamen on board the American SS MORMACSUN and acting under authority of his Merchant Mariner's Document No. Z-247899-D1 while the ship was in the port of Jacksonville, Florida.

About 0100 on this date, Appellant and ordinary seamen Arthur J. Matzke engaged in an altercation in the crew's messroom. Other members of the crew kept the two seamen from fighting with each other. Appellant then went to his room. Shortly thereafter, Matzke went to Appellant's roommate knocked on his door. When Appellant opened the door, angry words were exchanged before Matzke struck Appellant in the mouth. As the two seamen scuffled in the room, Appellant quickly gained the upper hand and then used a piece of a broken water glass with which to severely cut Matzke on the left side and top of his head. When other members of the crew arrived on the scene, Appellant was on top of Matzke who was bleeding profusely. Matzke was taken to the hospital in an ambulance. Appellant suffered comparatively minor injuries including cuts on his hands.

Appellant's prior record consists of a probationary suspension in 1945 for wrongful possession of ship's stores.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he acted in self-defense after he was attacked in his room by Matzke.

OPINION

Appellant denies that he cut Matzke with the glass and claims that he acted in self-defense. Appellant testified that the glass was knocked off the desk during the scuffle and that Matzke must have cut his head either on the broken glass on the deck or by hitting it on the side of Appellant's locker. The testimony of the other witnesses and the cuts on Appellant's hands do not support either of these two versions. The evidence clearly indicates that Appellant deliberately used the glass to cut Appellant on the head. Although Appellant was justified in using a reasonable amount of force to repel Matzke's attack, there is not the slightest doubt that cutting him with the glass constituted the use of excessive force in self-defence. This is so not only because the use of the deadly weapons is rarely justified in repelling an attack without weapons but also in view of Appellant's own testimony that he was able to overpower Matzke without assistance. Therefore, Appellant was guilty, as charged, of assault and battery upon Matzke with the piece of glass.

Apparently, the Examiner considered Appellant's clear record since 1945 and the fact that Matzke was the initial aggressor in imposing a lenient order of suspension under the circumstances. The usual order in such cases is one of revocation.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 6 January 1958, is AFFIRMED

J A Hirshfield
Rear Admiral U.S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 9th day of July, 1958.